

**COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Commission Minutes

**Clarion Hotel
320 Hillsborough Street
Raleigh, NC 27603**

Thursday, November 20, 2008

Attending:

John R. Corne, Dr. Diana J. Antonacci, Dr. Richard Brunstetter, Dorothy Rose Crawford, Judith Ann Dempsey, Sandra C. DuPuy, Mazie T. Fleetwood, Thomas Fleetwood, Thomas Gettelman, Paul Gulley, J. Michael Hennike, Ellen Holliman, Elizabeth MacMichael, Phillip A. Mooring, Dorothy O'Neal, Stanley Oathout, Dr. Greg Olley, John Owen, Larry Pittman, Norman Carter, Pamela Poteat, Jerry Ratley, Marvin Swartz, Don Trobaugh, Martha Martinat

Excused Members: Dr. Anna Scheyett, Connie Mele

Ex-Officio Committee Members:

Martha Brock, Sally Cameron, Ellen Russell, Robin Huffman

Division Staff:

Leza Wainwright, Michael Lancaster, MD, Steven Hairston, W. Denise Baker, Marta T. Hester, Amanda J. Reeder, Andrea Borden, Tonya Goode, Art Eccleston, Stuart Berde, Jim Jarrard, Mabel McGlothlen, Bill Scott, Wanda Mitchell, Helen Wolstenholme, Candy Helms, Lisa R. Moon

Others:

Fred Waddle, Ann Rodriguez, David Peterson, Floyd McCullough, Susan Pollitt, Stephanie Alexander, Erin McLaughlin, Muhammad Phipps, Paula Cox Fishman, Diane Pomper, Jack Register, Karen Salacki, Lucy Inman, Gene Rodsos, Louise G. Fisher, John Crawford

Handouts:

1. Grandfather Homes for Children – Final Agency Decision
2. Best Practices for Implementing the Recommendations of “Looking Forward: A Summit on the Developmental Disabilities System in North Carolina” (Technical Report)
3. Handouts on Death Reporting
4. Letter from NC Disability Rights to the Commission on Death Reporting
5. Presentation Handouts “*NC Commission for Mental health, Developmental Disabilities and Substance Abuse Services: Orientation*”
6. Commission Rulemaking Timeline Guide

Mailed Packet:

1. November 20, 2008 Agenda
2. Draft August 21, 2008 Commission Minutes
3. Draft October 15, 2008 Rules Committee Minutes
4. Draft October 16, 2008 Advisory Committee Minutes
5. November 20, 2008 Commission Meeting Information

- Proposed Amendment of 10A NCAC 27G .0404 – Operations During Licensed Period
- Proposed Adoption of 10A NCAC 27A .0400 – Payment, Reporting and Settlement for LME Systems Management
- Proposed Amendment of 10A NCAC 27G .0504 – Client Rights
- Proposed Adoption of 10A NCAC 26C .0700 – Provider Endorsement
- Proposed Amendment of 10A NCAC 27G .0104 – Staff Definitions
- Proposed Amendment of 10A NCAC 27G .0810, .0811 & .0812 – Panel Appeals

Call to Order

John R. Corne, Commission Chairman, called the meeting to order at 9:43am and asked that a moment of silence be used to reflect on the work of the Commission. Chairman Corne also issued the ethics reminder to the Commission.

Introduction and Welcome

Chairman Corne recognized the new members on the Commission (Norman Carter, Thomas Gettelman and Betsy MacMichael) and asked that they introduce themselves. He continued with the introductions of all Commission members, staff from the NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (NC DMH/DD/SAS), and the public.

Approval of Minutes

Upon motion, second, and unanimous vote, the Commission approved the minutes of the August 21, 2008 Commission Meeting.

Director's Report

Leza Wainwright, Co-Director, NC DMH/DD/SAS, discussed the state of the economy and the impact that it is having on the Division. Ms. Wainwright stated that the Governor has requested all state agencies to develop plans to be able to give back a minimum of four percent (4%) of their budget. This excludes Medicaid and Health Choice. The Division has the second largest budget in the NC Department of Health and Human Services, so when you take Medicaid out of the equation the Division is the big target. The Division is facing a total reduction of \$24.2 million. Ms. Wainwright continued by stating that a \$9 million reduction will be coming out of the state facilities (37% of total reduction) and central office is taking a \$413,000 reduction (1.7% of the total reduction). The Division has had approximately \$800,000 of unallocated community funds that were considered; however, this did not equate to a reduction in services since these dollars had not yet been allocated. The Division has also reduced some of the direct service contracts. As far as the local management entities are concerned, the Division took a percentage reduction across the top of two percent 2% of all of the state allocated cross area service program funds. The agency reduced the Local Management Entity (LME) Systems Administration, the systems management payments that go to the LMEs to fund their internal operations by \$2.5 million in state money. Ms. Wainwright pointed out that a lot of the state money that goes to the LMEs for their system management payment serves as Medicaid match and that the actual net reduction is \$4.4 million in administration. Finally, there was a reduction of \$10.5 million in non-cross area service programs community service funds. Ms. Wainwright concluded by stating that it does not look like the state is going to collect the revenue it needs to fully support the budget and that this may not be the end of the reductions.

Ms. Wainwright received the following questions and comments from the Commission:

- Chairman Corne asked if there has been any discussion regarding a reduction in staff.
 - Ms. Wainwright stated that at this time the Division has a soft freeze on hiring. Critical care positions in the facilities are exempt; therefore, they are proceeding with hiring nurses and health care technicians. All of the positions in the central office and the non-critical positions in the institutions are subject to the hiring freeze. Travel has also been frozen.
- John Owen, Commission member, asked how the budget applies to a number of new positions at the state facilities.
 - Ms. Wainwright responded that they received funding for 107 new direct care staff in the state hospitals from the NC General Assembly. Since these positions fall into the critical care category, the hiring freeze will not impact those.
- Norman Carter, Commission member, asked if Medicaid funds would be affected by the cuts.
 - Ms. Wainwright responded that Medicaid is taking reductions, but they were not included in the numbers she presented to the Commission. Medicaid is looking more at rate issues and in some cases some clinical coverage issues.
- Don Trobaugh, Commission member, asked if the loss of funds for Cherry Hill Hospital will affect the Division's budget in any way.
 - Ms. Wainwright responded that it would and just under \$100,000 in receipts a month at Cherry Hill Hospital is being lost. She mentioned that Broughton Hospital may be able to receive reimbursement retroactively because it is appealing the de-certification.

Ms. Wainwright stated that the new Community Alternatives Program for Persons with Mental Retardation and other Developmental Disabilities (CAP/MR-DD) waivers were implemented November 1, 2008, and that the implementation has gone smoothly. She further added that she is aware of the interest that the Commission and General Assembly has had in having the local management entities resume the utilization reviews for Medicaid consumers. The application package was distributed Friday; the applications must be submitted by December 15th. The Division will review those paper applications and any LME that appears to meet all the requirements will be notified in mid January. Next, site reviews will be conducted and the goal is to have local management entities that comprise at least 30% of the state's total population assuming that function July 1st.

Chairman's Report

Chairman Corne informed the Commission members that the Governor Elect is holding forums across the state to include a forum on mh/dd/sas issues. He also announced that members must participate in a mandatory ethics training offered by the NC State Ethics Commission.

Rules Committee Report

Chairman Corne gave the report for the Rules Committee meeting held October 15, 2008. Chairman Corne stated that the rules being brought before the Commission today were discussed at the Rules Committee meeting in detail.

Proposed Amendment of 10A NCAC 27G .0404 – Operations During Licensed Period

Stephanie Alexander, Chief, NC Division of Health Service Regulation, Mental Health Licensure and Certification Section, presented the proposed amendment of 10A NCAC 27G .0404 – Operations During Licensed Period. This rule is intended to clarify and make technical corrections based on changes to the statute in 2005. This rule reflects those changes that include: 1) revision to the licensure and renewal period; 2) addition of a requirement to post DHSR complaint hotline number in each residential facility; 3) deletion of outdated requirements related to inspections; 4) revisions to the requirements concerning facility changes; 5) addition of a requirement prohibiting renewal of a license for a facilities that have served no clients during the previous 12 months; 6) the addition of requirements mandating inspection of 24-hour facilities an average of once every 12 months not to exceed 15 months; and 7) revisions of submission requirements prior to licensure renewal.

This is a Secretary rule and is being presented to the Commission for information and comment. Therefore, no action is required by the Commission.

Ms. Alexander received the following questions and comments from the Commission:

- Chairman Corne questioned how many staff are involved in the annual licensing of facilities.
 - Ms. Alexander responded that the renewals were an administrative function and they are not required by statute to do a survey in order to renew their license. Every license expires December 31st. To renew its license a facility must send in its renewal fee, current fire and sanitation inspections, and attestation letters, if appropriate. While another temporary worker is needed, this task is currently completed by two temporary workers and five support staff at DHSR.
- Dr. Brunstetter, Commission member, asked if there was adequate staff to keep up with the workload that would be involved with 15 month site visits.
 - Ms. Alexander answered that was not. Ms. Alexander stated that they did meet the mandate for July 1, 2007 – June 30, 2008. Ms. Alexander will be developing an expansion budget request for next year; she is not sure if there will be enough money to permit hiring additional staff.
- Michael Hennike, Commission member, commented that having been a director of a facility, he has seen the adverse consequences of inadequate notice to families and clients when a facility goes out of business.

Proposed Adoption of 10A NCAC 27A .0400 – Payment, Reporting and Settlement for LME Systems Management

William Scott, Budget & Finance Team Leader, NC DMH/DD/SAS, Resource and Regulatory Management Section, presented the adoption of 10A NCAC 27A .0400 – Payment Reporting and Settlement for LME Systems Management. Mr. Scott addressed the change that was made since the initial review in Rule 10A NCAC 27A .0404 – Settlement of LME Systems Management Payments. Mr. Scott stated that this change would give the LME greater incentive to bill and to provide the services to the clients. It will also allow them to earn more dollars.

This is a Secretary rule and presented for information and comment. Therefore, no action is required from the Commission.

Proposed Amendment of 10A NCAC 27G .0504 – Client Rights

Stuart Berde, Team Leader, Customer Service and Community Rights, NC DMH/DD/SAS, presented the proposed amendment of 10A NCAC 27G .0504 – Client Rights. The amended language is necessary to update the rule to conform to current developments in Mental Health Reform.

Mr. Berde received the following questions and comments from the commission:

- Sandra DuPuy, Commission member, stated that she was concerned about the Provider Client Rights Committees and their effectiveness. Ms. DuPuy asked if the LMEs Client Rights Committee has the authority to review Provider reports and questioned the consequences of provider deficiencies in performing their duties related to Clients Rights Committees.
 - Mr. Berde responded that there are Provider monitoring rules that this committee has the authority to make sure that the LME is doing its job in the provider monitoring cycle. Mr. Berde further stated that the LME does not have to accept that report.
- Betsy MacMichael, Commission member, asked how any of the proposed changes would show up in a real life scenario.
 - Mr. Berde stated that a client's rights committee is required by the endorsement process.
- Norman Carter, Commission member, asked if everybody has a client's right committee.
 - Mr. Berde stated that all LMEs have one now. The Provider is now required to develop a system to have a client's right committee of their own.
- John Owen, Commission member, asked how often complaints are substantiated.
 - Mr. Berde responded that the Division now has a standardized complaint reporting system that will be posted on the Division's web site so that all complaints to LMEs are now on a standard format and quarterly reports will be published.
- Greg Olley, Commission member, stated for clarification that client's right committees at the LME level or at the Provider level do more than hear complaints. They are more than a policing agency and when they are properly operated they are of assistance to Providers in preventive ways.

Upon motion, second and unanimous vote, the Commission approved the proposed amendment of 10A NCAC 27G .0504 – Client Rights.

Proposed Adoption of 10A NCAC 26C .0700 – Provider Endorsement

Mabel McGlothlen, LME Systems Performance Team, NC DMH/DD/SAS, presented the adoption of 10A NCAC 26C .0700 – Provider Endorsements. These rules establish the requirements for providers that seek to provide mh/dd/sa services. Provider endorsement is intended to ensure the following: 1) that providers are in compliance with state and federal regulations; 2) there are quality services; and 3) the providers are competent to provide Medicaid services. This is a Commission rule and is being presented for approval for publication.

Ms. McGlothlen received the following questions and comments from the Commission:

- Mr. Owen asked if any LMEs can endorse a Provider and if this was good for across the state.

- Ms. McGlothlen, stated that if the Provider was nationally accredited it would be statewide; however, if they are not nationally accredited the endorsement would be limited to that site and service.
- Ms. DuPuy questioned if there was a provision for the Provider to appeal the LMEs decision.
 - Ms. McGlothlen stated that there was a provision to appeal, but not in these rules.
- Mr. Owen also questioned if the rule that allows the Division to take over LME functions has ever been exercised.
 - Ms. McGlothlen responded that it had.
- Mr. Hennike asked what was the motivation or the incentive for a provider to be responsible if its endorsement is being withdrawn.
 - Ms. McGlothlen responded that there was no penalty and she did not think that the NC Division of Medical Assistance could withhold payment.
- Stephanie Alexander stated that if a licensed provider did not do what was required as per this rule and a complaint was received, DHSR would investigate. If the agency found that the provider's non-compliance with this rule resulted in harm to a consumer, the agency would be able to follow-up with further administrative action. Ms. Alexander further stated that other rules govern these facilities; the facility is still licensed and DHSR can still take administrative actions against a licensed provider regarding this rule.
- Mr. Hennike also asked if there was an appeal process for endorsement withdrawal.
 - Ms. McGlothlen responded that they have been informed by the Attorney General's Office that this is not their role.
 - Denise Baker, Team Leader, NC DMH/DD/SAS, also added that they were told the provider endorsement is strictly an LME function and the Division does not have the authority to intervene in LME functions except under specific circumstances.
- Dr. Marvin Swartz, Commission member, wanted the record to show that the Provider Endorsement rules were not delayed as a result of the Commission and Ms. McGlothlen supported this by stating the rules were delayed because endorsement continued to change; in addition, the statutory authority for the content of this rule also changed.

Upon motion, second, and majority vote, the Commission approved the proposed adoption for publication of 10A NCAC 26C .0700 – Provider Endorsement for publication.

Proposed Amendment of 10A NCAC 27G .0104 – Staff Definitions

Dr. Art Eccleston, Clinical Policy Specialist, NC DMH/DD/SAS, presented the proposed amendment of 10A NCAC 27G .0104 –Staff Definitions. It is proposed that the above rule be amended to: 1) establish a Licensed Clinical professional category for the mh/dd/sa system; and 2) update licensure and certification information related to substance abuse. The proposed language is presented to the Commission for final review and adoption of amendments.

Upon motion, second, and majority vote, the Commission approved the proposed amendment of 10A NCAC 27G .0104 – Staff Definitions.

Selection of Vice Chairperson of the Commission

Chairman Corne stated that the Commission needed to elect a Vice Chair whose primary responsibility would be to preside over the meetings in his absence and share some of his responsibilities. He also stated that he would make it a practice to attend all committee meetings. A Commission member nominated Dr. Anna Scheyette; however, Chairman Corne stated that he did not want to elect Dr. Scheyett when she was not present at the meeting. Chairman Corne stated that this would be put on the February agenda. Norman Carter stated that he was also very interested in the Vice Chair position.

Chairman Corne stated that convening the Commission meetings on the third Thursday of the month is becoming a problem due to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services' meeting on the same day. Chairman Corne further stated that the staff from the Division (Leza Wainwright and Dr. Michael Lancaster) are required to attend the LOC and the Commission is not getting the benefit of enough time with the Director's due to their required presence at the legislative meetings. Chairman Corne would like to Commission members to consider rescheduling the meeting dates of the Commission meetings for 2009 to the second Thursday of the month. He further stated that he would check with the hotel regarding their availability to accommodate the new dates and asked the Commission members to think of any potential conflicts that they may have as a result of the change. This issue will be discussed at the next meeting.

Proposed Amendment of Panel Appeals 10A NCAC 27G .0810 - .0812

W. Denise Baker, Team Leader, Division Affairs Team, NC DMH/DD/SAS, presented the amendment of 10A NCAC 27G .0810 - .0812 – Panel Appeals. The proposed amendments further clarify the Administrative Review and Hearing procedures involved in processing appeals to the State MH/DD/SA Appeals Panel. The proposed amendments also clarify the timeframes involved. This is a Secretary rule and is presented to the Commission for information and comment.

Ms. Baker referenced the provider appeals that were referenced during Ms. McGlothlen's presentation of the Provider Endorsement rules. Ms. Baker stated that the guidance that they had received from the Attorney General's office was that provider endorsement is strictly a LME function.

- Mr. Owen asked if this was also the process for consumer appeals for legal services.
 - Ms. Baker stated that it was not and further stated that there are two appeal processes available to the consumer: through the Department's Consolidated Hearing Unit and the Division's non-Medicaid appeal process depending on the type and funding source of services requested.
- Ms. DuPuy stated that they felt it would be helpful for the rule to say who sits on the appeals panel.
 - Ms. Baker responded that the other two people who sit on the panel are a LME representative and a provider representative and that she would be make the necessary change to the rule.

Advisory Committee Report

Dr. Swartz stated that the majority of the Advisory Committee meeting in October 2008 was on the death reporting requirements. Dr. Swartz stated that the committee also reviewed the work of the Commission in terms of its advisory role and what the Advisory Committee wanted to do in

the future. The Advisory Committee came to a decision that it would continue to discuss access to care, including medical care and dental care.

Death Reporting

Before Dr. Swartz began his presentation on the death reporting, Dorothy O'Neal, Commission member, recused herself from discussion and final vote on the report. Dr. Swartz stated that the Commission was charged with studying the current death reporting requirements under G.S. 122C-26(5)(c) and assessing the need for any additional reporting requirements and modifications. Dr. Swartz and Chairman Corne stated that individuals from the Division who presented at the Advisory Committee meeting would also be giving their presentations again today to the full Commission.

Stephanie Alexander gave a presentation which referenced and explained the grid created by Division staff which is designed to help clarify what needs to be reported, to whom, and what happens when the report is made. Mr. Hennike asked what would be an example of a death related to a facility not being in compliance with a rule. Ms. Alexander stated that if you have an individual who went outside to smoke, they had other existing conditions, the facility forgot to check on them (so it was a supervision issue), and they had a serious medical condition and died. Ms. Alexander stated that they might have died anyway, but the facility was not supervising them.

Helen Wolstenholme from the Division's State Operated Services Section, covered the death reporting requirements for the state facilities such as the federal regulation, N.C.G.S. 122C-31, Rules 10A NCAC 276C .0301 - .0303 of the NC Administrative Code, and the Division's policy.

Candi Helms, Quality Management Team, NC Division of MH/DD/SAS, gave a presentation on the different levels of incident reporting. Level one incident would require only first aid and would be documented in-house by the provider. Level two incidents would require health treatment by a licensed or certified medical practitioner, it might be an incident that occurred that required the police to be involved or another oversight agency. Level three incident would be a death of a consumer by anything other than natural causes and would be any other type of incident that might cause permanent or physical damage to the consumer. Level two incidents must be reported to the LME within three days of occurrence. Level three incidents must be reported to the LME and to the Division within three days. Mr. Hennike asked if someone dies in a licensed facility and it is not tied to an incident and it may be of natural causes, but could be a function of poor care, is this captured somewhere in a reporting requirement. Ms. Helms responded that the incident report requires that they describe what occurred at the time of the death and that should include what the staff did, what was going on when the death happened, whether the person was under medical treatment, etc. If it is reported as a level two incident, the LME can investigate the death further and see what is going on. A Commission member asked what if the LME was the Provider. Ms. Helms stated that in that case right now they are monitoring themselves; this is an issue that they are trying to deal with.

Susan H. Pollitt, attorney, Disability Rights of NC, stated that they are currently the state's protection and advocacy system and provided a history of the organization beginning with 1975. Ms. Pollitt stated that she felt it was important to have an independent review of these deaths, in all settings. Disability Rights of NC have found that the Division of Health Service Regulations does a great job; they are independent and are not part of the Division of MH/DD/SAS. They are determined to remain independent and provide that independent review and she would encourage that the Division of Health Service Regulation be included in the list of people who are notified about deaths along with the Division and State Operated Services.

A Commission member stated that one of things discussed at the Advisory Committee meeting was to recommend consistency regardless of where the death occurs. They also talked about closing that report loop, so that if a LME found out about something, the LME had obligations to notify facilities where that person had been served, as well as the facility notifying the LME, etc.

Mr. Trobaugh stated that all deaths (licensed, unlicensed and people who are receiving supplemental health financial support) should be reported within 24 hours. Following the report, the cause of death should be determined and it should be investigated by an independent third party.

Mazie Fleetwood, Commission member, stated that another reason to report the deaths as soon as possible is that you do not know whether other people in that same facility may be in danger or not receiving appropriate care.

It was clarified that what is being discussed and proposed is any death that occurs of any client served by any mh/dd/sa provider.

Dr. Swartz stated that if they made this recommendation it would mean that all deaths would be reported even those from natural causes. He also asked Ms. Alexander how many individuals she would need in her Division to investigate all deaths in all programs. Ms. Alexander responded that they have no regulatory authority over unlicensed facilities. Ms. Alexander stated that it would be really hard to give them a realistic answer at this time.

Dr. Brunstetter suggested the recommendation of the Advisory Committee be adopted. As a result, Dr. Swartz directed the Commission to the Advisory Committee's report on *Death Reporting* and the recommendations that were made.

Upon motion, second, and majority vote, the Commission adopted the Advisory Committee's report on Death Reporting to be submitted by the Commission to the Joint Legislative Oversight Committee.

Contested Hearing Decision

Chairman Corne stated that the Grandfather Home decision was sent to the Commission members and that there would not be an appeal to their decision. He also thanked the Commission and commented on how well prepared they were for deliberation of the hearing.

Commission Orientation

Steven Hairston, Section Chief, Operations Support Section, NC DMH/DD/SAS, gave a presentation on the Division's web site and a brief overview of the new orientation manual for the members. Mr. Hairston also covered a grid on all the rules that the Commission had processed over the last two years.

Chairman Corne stated that at each of the Committee meetings (Rules and Advisory) he announced his intention and decision to forgo the practice of having Ex-Officio members on the Committees. The argument against Ex-Officio members as designated is that there is no statutory authority; furthermore, he firmly believes that Committees of this Commission should be made up solely of Commission members. Chairman Corne further stated that he had received a couple of letters questioning whether his decision was a good idea. He stated that he is committed to open this up to the Commission, and talk about transparency. Chairman Corne does not believe that transparency means that outsiders from the Commission are members of committees, even

non-voting members. The individuals in the past who have been Ex-Officio members, or anyone else who wishes to participate may do so. The committee meetings are less formal than this and there will be plenty of opportunities for the public to work with the committee to hash out issues and concerns.

Public Comment

Jack Register, Incoming Chair, Coalition for Persons Disabled by Mental Illness, gave a statement regarding opposition to Chairman Corne's decision to remove the Ex-Officios from the Rules and Advisory Committees. He opined that ex officio members provide (1) a voice outside government; (2) continuity of information; and (3) support for the spirit of inclusiveness.

Louise Fisher stated that she agreed with Chairman Corne's decision to remove Ex-Officios from the Rules and Advisory Committee. She noted that provider agencies receive payment from the state and have an interest in the outcome of the discussion. She commented that their removal permits them to be treated as other members of the public.

There being no further business the meeting adjourned at 3:30 pm.